

## CHAPTER 41 HOUSING PRODUCTION TRUST FUND PROGRAM

### Secs.

4100	General Provisions
4101	Organization of the DHCD Housing Production Trust Fund
4102	Responsibility and Authority of DHCD
4103	The Housing Production Trust Fund Board
4104	The Housing Production Loan Component
4105	Participating Lenders for Housing Production Loans
4106	Applications for Housing Production Loan
4107	Eligibility and Priority Criteria for Housing Production Loan
4108	Approval and Funding of Applications and Continuing Responsibilities of Developers
4109	The Special Financial Products Component
4110	Applications: Special Financial Products
4111	Eligibility and Priority Criteria for Special Financial Products
4112	Conditions for Project Closings
4199	Definitions

### 4100 GENERAL PROVISIONS

- 4100.1 This chapter shall set forth rules governing the operation of the Housing Production Trust Fund (the Fund), and administered by the D.C. Department of Housing and Community Development (DHCD).
- 4100.2 The purpose of the Fund shall be to provide financial assistance to non-profit and for-profit developers for the planning and production of low to moderate income housing and related facilities.
- 4100.3 The Fund is established under the authority of the Housing Production Trust Fund Act of 1988, D.C. Law 7-202 (the Act), D.C. Code §45-3101 *et seq.* (1990 Repl. Vol.).
- 4100.4 The Director, for good cause shown in writing, may waive any provision of this chapter, except the provisions of §§4101.3, 4105.2, 4106.1, 4106.4, 4107.11, 4110.3 consistent with applicable law. All waivers shall be justified by a determination that undue hardship will result from applying the requirement and where application of the requirement would adversely affect the purpose and objectives of the Fund.

**AUTHORITY:** Unless otherwise noted, the authority for this chapter is the Housing Production Trust Fund Act of 1988, D.C. Law 7-202, D.C. Code §45-3101 *et seq.* (1990 Repl. Vol.).

**SOURCE:** Final Rulemaking published at 36 DCR 8631 (December 29, 1989).

**4101 ORGANIZATION OF THE DHCD HOUSING PRODUCTION TRUST FUND**

- 4101.1 DHCD shall organize and administer the Fund to facilitate creation of affordable housing and related activities for the citizens of the District of Columbia through the provision of financial assistance to eligible non-profit and for-profit developers.
- 4101.2 The Fund shall be a permanent proprietary revolving fund of identified, renewable, and segregated capital.
- 4101.3 DHCD may, subject to the provisions of the District of Columbia Depository Act, designate financial institutions described in §4105.2(a) and located in the District of Columbia as depositories for the Fund and deposit all or a portion of the monies held by the Fund in the designated depositories.
- 4101.4 When selecting the financial institutions to serve as depositories for the Fund, DHCD shall give priority to financial institutions described in §4105.2(a) with the following characteristics:
- (a) Demonstrated commitment to and expertise in community development lending;
  - (b) Ability and written commitment to provide investments of equity capital to Fund-assisted projects either directly or through a Bank Community Development Corporation (Bank CDC), or similar subsidiary entity;
  - (c) Demonstrated commitment to organize and capitalize a Bank CDC or increase the capitalization of an existing Bank CDC in amounts related to Fund deposits; and
  - (d) The ability and commitment to satisfy other criteria which DHCD may reasonably establish and make known to potential depositories.
- 4101.5 There shall be deposited in the Fund the following:
- (a) Fee option contributions made by commercial developers pursuant to any commercial linked development program established by the Council and codified by D.C. Statute;
  - (b) Community Development Program contributions made pursuant to the District of Columbia Regional Interstate Banking Act of 1985 Amendment Act of 1985, effective April 1986, D.C. Law 6-107; D.C. Code §§26-801 *et seq.*, as determined by the Superintendent of Banking and Financial Institutions in consultation with DHCD;
  - (c) Appropriated amounts;
  - (d) Grants, fees, donations, gifts, investments or other deposits from public and private sources;



- (e) Repayments of principal and interest on loans provided from the Fund;
- (f) Proceeds realized from the liquidation of security interests held by the District under the terms of assistance provided from the Fund;
- (g) Interest earned from the deposit or investment of monies from the Fund;
- (h) All revenues, receipts, and fees of whatever source derived from the operation of the Fund;
- (i) Lease payments received under the Land Acquisition for Housing Development Opportunities Program;
- (j) Any fee or portion of an application fee that the Zoning Commission, by rule, may require an applicant for a Planned Unit Development to pay when the applicant proposes a housing production option or fee option in connection with a Planned Unit Development application, to the extent that the Zoning Commission designates that the fee or portion of that fee shall be allocable to the Fund;
- (k) Available Community Development Block Grants; and
- (l) Any other funds as may be designated for this purpose by Council action.

4101.6 The Fund shall be organized into a Housing Production Loan Component and a Special Financial Products Component.

4101.7 The Housing Production Loan Component shall provide loans for the production of housing for target populations as authorized by D.C. Law 7-202 and detailed in this chapter; including loans for acquisition, construction, rehabilitation and preservation of housing affordable by low- and moderate-income households.

4101.8 The Special Financial Products Component shall provide a variety of specialized forms of financial assistance authorized by D.C. Law 7-202 and specified in this chapter.

SOURCE: Final Rulemaking published at 36 DCR 8631 (December 29, 1989).

## **4102 RESPONSIBILITY AND AUTHORITY OF DHCD**

4102.1 DHCD shall have responsibility and authority for administration of the Fund.

4102.2 The Director shall allocate monies deposited in the Fund between the Housing Production Loan Component and the Special Financial Products Component.

4102.3 DHCD may establish specific underwriting criteria, evaluation procedures, priorities, and other criteria and procedures consistent with the Act and this chapter as may be necessary for the effective day-to-day operation of the Fund. These guidelines and procedures may be revised from by DHCD.

- 4102.4 The guidelines and procedures shall be specified in writing and made available to any financial institution seeking to be designated as a depository for the Fund pursuant to §4101.3, or as a Participating Lender as described in §4105.1 or to any applicant for assistance under the Fund.
- 4102.5 DHCD shall establish a One Stop Center to provide information to potential developers considering the development of affordable housing, particularly minority and non-profit developers.
- 4102.6 The One Stop Center shall provide potential housing developers with direct access to information and assistance on housing production programs including, but not limited to, the following:
- (a) Available public and private sources of debt and equity capital;
  - (b) Housing programs of DHCD, the D.C. Housing Finance Agency, other District and federal agencies; and
  - (c) Pre-application technical assistance to non-profit housing developers.
- 4102.7 DHCD shall develop an annual community outreach plan, which shall promote maximum visibility of the Fund and its operations and full participation by developers, lenders, and District residents who request assistance through the Fund.
- 4102.8 DHCD shall periodically review Fund revenue sources to determine what additional revenue sources may be required to assure the continuation of the Fund and its programs and, if necessary, shall request Council action to access revenue sources otherwise unavailable to DHCD.
- 4102.8 DHCD shall also be responsible for the following:
- (a) Filing with the Chairperson of the Council Committee on Housing and Economic Development quarterly reports on activities and expenditures of the Fund;
  - (b) Conducting public hearings, and making annual assessments of the continued housing needs of low- and moderate-income households;
  - (c) Monitoring for compliance written agreements entered into by DHCD and commercial developers any Borrower or Grantee receiving Fund assistance pursuant to the Act and the rules; and
  - (d) Commissioning an annual audit report of the Fund by a Certified Public Accountant or firm of public accountants independent of DHCD in accordance with generally acceptable government auditing standards covering financial and compliance audits which sets forth the amount of deposits in the Fund, the aggregate amount of all loans or grants issued by the Fund, and the number and amount of Fund loans in default.



- 4102.10 The audit may be conducted and included among any other similar audit of DHCD or its programs.

SOURCE: Final Rulemaking published at 36 DCR 8631, 8633 (December 29, 1989).

#### **4103 THE HOUSING PRODUCTION TRUST FUND BOARD**

- 4103.1 The Mayor shall establish an advisory Housing introduction Trust Fund Board (Board) to advise DHCD on the development, financing and operation of the Fund and other matters related to the planning and production of housing for low and moderate income households.
- 4103.2 The Board shall offer advice with respect to the following functions of the DHCD Director:
- (a) Identifying and developing sources of private and public capital for the Fund and its projects, to ensure the growth and continuation of the Fund and the achievement of its mission;
  - (b) Advocating participation in the Fund and its activities by private for-profit and non-profit entities to increase the production of affordable housing and related facilities for low- and moderate-income households;
  - (c) Developing strategies to leverage capital for profit and non-profit community development corporations, public development corporations and similar entities and to identify other resources available for the production of affordable housing for low- and moderate-income households;
  - (d) Monitoring, reviewing, and analyzing Fund programs and operations, providing guidance on the most effective private and public market practices for management of the Fund;
  - (e) Encouraging and assisting housing developers, particularly non-profit housing developers, to effectively and efficiently access the Fund, DHCD, and private sector real estate finance opportunities to secure debt and equity capital required to provide affordable housing opportunities and child development facilities for low- and moderate-income households; and
  - (f) Allocating funds between the Housing Production Component and the Special Financial Products Component.

SOURCE: Final Rulemaking published at 36 DCR 8631, 8635 (December 29, 1989).

#### **4104 THE HOUSING PRODUCTION LOAN COMPONENT**

- 4104.1 Funds allocated to the Housing Production Loan Component may be used to provide Housing Production Loans or equity capital to Eligible Borrowers described in §4106.1.

4104.2 DHCD may establish guidelines and procedures consistent with the Act and this chapter as may be necessary to review and authorize equity investments by the Fund. These criteria and procedures may be revised by DHCD.

4104.3 Housing Production Loans may be used for the following activities:

- (a) Acquisition of real property for housing uses, including housing for the elderly, disabled or handicapped;
- (b) Construction of residential structures or substantial rehabilitation of housing and related facilities, including housing for the elderly, disabled or handicapped;
- (c) Improvements to preserve housing including repairs needed to correct or remove actual or incipient D.C. Code violations which, if not repaired, would reasonably be expected to result in District of Columbia Housing Code deficiencies within five (5) years; and
- (d) Operating Capital for housing development, including funds to retain Professional Services, or to establish a Contingency Reserve Fund of up to ten percent (10%) of the Housing Production Loan, as follows:
  - (1) Professional services costs for reasonable and customary costs of architectural, engineering and related professional services required in the preparation of rehabilitation plans, drawings, write-ups, or specifications of work;
  - (2) Financing costs, including processing and loan settlement. Examples of financing costs include the following:
    - (A) The cost of building permits and related fees;
    - (B) Loan origination fees;
    - (C) Credit reports;
    - (D) Fees for title work and other legal fees related to obtaining an acceptable title report.
    - (E) Fees for recording and filing legal documents related to the loan;
    - (F) Appraisal fees; and
    - (G) Fees for an independent rehabilitation cost estimate; and
  - (3) A Contingency Reserve Fund to be used for unanticipated construction interest or construction costs and unanticipated increases in other eligible loan costs.



4104.4 All Housing Production Loans shall conform to the following underwriting standards and criteria:

- (a) The Housing Production Loan shall constitute no more than forty-nine percent (49%) of the Total Development Costs;
- (b) The Housing Production Loan shall be secured by a lien on the property, which may be subordinate to other lien(s) encumbering the property;
- (c) The term of the Housing Production Loan shall be up to forty (40) years, or the term of the superior mortgage, if any, whichever is longer;
- (d) The superior mortgage(s) may be refinanced subject only to the express prior written approval of DHCD or its designee; and
- (e) DHCD reserves the right to review the terms and conditions of the new superior mortgage(s) and to require amendment of any conditions of the Housing Production Loan before granting approval of any proposed refinancing of a superior mortgage.

SOURCE: Final Rulemaking published at 36 DCR 8631, 8636 (December 29, 1989).

#### 4105 PARTICIPATING LENDERS FOR HOUSING PRODUCTION LOANS

4105.1 DHCD may designate certain Financial Institutions to be Participating Lenders authorized to originate Housing Production Loans pursuant to the Act and this chapter.

4105.2 The following types of financial institutions shall be eligible to apply to be designated Participating Lenders and to originate Housing Production Loans:

- (a) Financial institutions which have accounts insured by any agency of the United States or subsidiary entities of such institutions;
- (b) Financial institutions who are approved mortgagees of the Federal Housing Administration, U.S. Department of Housing and Urban Development;
- (c) Any financial institution including Federal National Mortgage Association or Federal Home Loan Mortgage Corporation designated seller service which presents evidence of responsibility, permanency, financial adequacy, and requisite administrative capabilities determined acceptable by DHCD; and
- (d) Any mortgage banking or mortgage brokerage firm licensed and regulated by the D.C. Office of Banking and Financial Institutions.

4105.3 When evaluating Financial Institutions described in §4105.2 to select Participating Lenders to originate Housing Production Loans, DHCD may give priority to Financial Institutions which demonstrate the following:

- (a) Ability and commitment to provide investments of equity capital to Housing Production Loan projects either directly or through one or more subsidiary entities;
- (b) Commitment to expand their housing production lending in the District which is not related to Housing Production Loans; or
- (c) Demonstrated commitment to and expertise in housing production lending for low and moderate income households.

4105.4 Each Participating Lender approved to originate Housing Production Loans shall be required to execute a contract with DHCD, which shall set forth the rights and responsibilities of both the Participating Lender and DHCD. The contract terms shall include, but not be limited to, the following:

- (a) All Housing Production Loans originated by the Participating Lender shall conform to written underwriting criteria, evaluation procedures, priorities, and other criteria and procedures established by DHCD consistent with the Act and this chapter;
- (b) All Housing Production Loans originated by the Participating Lender shall be subject to review and audit by DHCD; and
- (c) The Participating Lender shall be obligated to purchase at its own expense any Housing Production Loan which the Participating Lender has originated and DHCD has determined, in its sole discretion, not to be in compliance with the Act, this chapter, or DHCD's written criteria, procedures and priorities.

4105.5 DHCD shall establish and publish the procedures consistent with the Act and this chapter by which DHCD will allocate reservations of Housing Production Loans to Participating Lenders.

4105.6 DHCD may authorize Participating Lenders to assess Eligible Borrowers fees, not to exceed an amount determined by DHCD to be reasonable, to accept and process applications submitted by Eligible Borrowers for Housing Production Loans. The fees may include, but not necessarily be limited to, the following:

- (a) Origination fees;
- (b) Loan discounts;
- (c) Appraisal review fees;
- (d) Lender inspection fees; and
- (e) Fees for preparation or review of closing documents.

SOURCE: Final Rulemaking published at 36 DCR 8631, 8637 (December 29, 1989).



**4106 APPLICATIONS FOR HOUSING PRODUCTION LOANS**

4106.1 A borrower may be eligible to make application for a Housing Production Loan if the borrower:

- (a) Is a person, partnership, joint venture, non-profit or for-profit organization, corporation or other entity legally capable of entering into contractual obligations;
- (b) Can establish to the satisfaction of DHCD or its designee reasonable capacity to provide the financial requirements of the project;
- (c) Supplies information satisfactory to DHCD or its designee of its management capabilities with respect to development, ownership or operation of the project; and
- (d) Certifies its compliance and warrants continued compliance with all applicable non-discrimination, equal opportunity, affirmative action, and minority business enterprise requirements of the federal and District governments.

4106.2 All applicants shall demonstrate evidence satisfactory to DHCD or its designee of site control of the specified property to be developed. Evidence of site control may include, but is not limited to, the following:

- (a) Title by deed or similar instrument evidencing ownership; or
- (b) Fully executed purchase contract, installment contract, option agreement or similar contractual instrument.

4106.3 DHCD reserves the right to develop specific procedures consistent with the Act and this chapter to afford priority consideration to the following categories of eligible borrowers:

- (a) Non-profit Housing Developers; and
- (b) Minority Housing Developers.

4106.4 The following individuals or entities shall be ineligible to make applications for a Housing Production Loan and receive assistance through the Fund:

- (a) Any person(s) including employees, agents, consultants, officers, elected officials or appointed officials of the District of Columbia government or DHCD determined to have a conflict of interest because of their responsibilities to the Fund, consistent with the provisions of the Ethics in Government Act of 1978 (18 U.S.C. 207 (Supp. IV 1980)) and D.C. Code §1-1461 (1987 Repl. Vol.);
- (b) Individuals, corporations, partnerships, or joint ventures officially excluded from participation in District of Columbia or federal contracting activities; and

- (c) Individuals prohibited by act of law from participating in District of Columbia contracting activities.
- 4106.5 DHCD shall periodically announce the availability of Housing Production Loans assistance and a summary of the requirements for receipt of applications for Housing Production Loans.
- 4106.6 In the announcement of availability of Housing Production Loans, DHCD shall provide general information, in a form prescribed by DHCD, which may include, but is not limited to, the following:
- (a) The deadline date(s) or other alternative timing requirements for submission of applications;
  - (b) The names and addresses of the Participating Lenders, if any, from whom application material and instructions may be obtained and to whom completed applications may be returned;
  - (c) Application fees, if any, required of applicants; and
  - (d) A detailed description of the types of assistance available through the Fund.
- 4106.7 DHCD's announcement of availability of Housing Production Loans and summary of application requirements shall be published in the following:
- (a) At least two (2) newspapers of general circulation in the District of Columbia; and
  - (b) In a newspaper(s) serving minority communities in the District of Columbia.

SOURCE: Final Rulemaking published at 36 DCR 8631, 8639 (December 29, 1989).

**4107 ELIGIBILITY AND PRIORITY CRITERIA FOR HOUSING PRODUCTION LOANS**

- 4107.1 Properties for which an Eligible Borrower may receive a Housing Production Loan shall provide a minimum of twenty percent (20%) of the total housing units in the development as Reserved Units for the term of the Fund assistance or for forty (40) years, whichever is greater.
- 4107.2 Fund assistance shall be limited as follows:
- (a) The percentage of all units which are Reserved Units in properties assisted with Housing Production Loans shall not be less than the percentage of the project's total development costs which are financed by Trust Fund assistance, as determined by DHCD;
  - (b) The type and size of the Reserved Units shall be representative of the



other housing units in the project for which assistance is not provided through the Fund;

- (c) The applicant shall ensure that the Reserved Units shall be continuously affordable to low- and moderate-income households for a period of forty (40) years or the term of the Housing Production Loan, whichever is greater, as specified further in §4112.5; and
- (d) The property shall be located in the District of Columbia.

4107.3 For compliance with the requirements regarding Reserved Units, the following shall apply:

- (a) In determining the number of Reserved Units for compliance with any requirement of this section, any fraction of a whole number shall be rounded up to the next highest whole number;
- (b) The maximum allowable monthly rents for Reserved Units, including utilities, determined periodically by DHCD shall be based on thirty percent (30%) of one-twelfth (1/12) of annual income limits for low income households as defined in §4199 and applied as follows:

Type of Unit	Applicable Low Income Limit
Efficiency (or bed in congregate facility)	One person limit
1 Bedroom	Two person limit
2 Bedroom	Three person limit
3 Bedroom	Five person limit
4 Bedroom	Seven person limit
5 Bedroom	Eight person limit

- (c) Where the provision of essential utilities is not included as part of the rent, a reasonable allowance for utilities as determined by DHCD shall be subtracted from the maximum allowable rent in determining compliance with affordable rent requirements.

4107.4 The applicant shall certify to DHCD that the applicant shall rent all Reserved Units in the project exclusively to low- and moderate-income households, consistent with the requirements of §4112.5.

4107.5 Properties which are occupied at the time of submission of an application for assistance under the Fund, or which shall be occupied during rehabilitation or other improvement activity, shall be eligible for participation in the Fund's programs provided that the relocation requirements of §4107.6 are met.

4107.6 Occupants of property shall be eligible for relocation assistance. Persons considered permanently displaced by activity assisted by the Fund shall include those whose displacement result from demolition activity.

- 4107.7 Property for which an Eligible Borrower may receive a Housing Production Loan shall not include hotels, motels, dormitories, fraternity and sorority houses, hospitals, nursing homes, sanitariums, rest homes, trailer parks and other similar facilities used for residential purposes.
- 4107.8 The following types of housing developments shall receive priority consideration for Housing Production Loans, provided they also meet other eligibility requirements:
- (a) Developments in non-elevator properties of less than four (4) stories in which at least fifteen (15%) of the total units contain three (3) or more bedrooms and will be available for rental or sale to low-income households consisting of four (4) or more persons;
  - (b) Developments financed with higher ratios of private to public funding than other eligible developments of the same type during the same funding period. In general, private financing shall be used to the maximum extent possible consistent with project feasibility; and
  - (c) Properties which are vacant at the time of application submission, rather than occupied properties.
- 4107.8 Projects assisted with Housing Production Loans shall be determined by DHCD or its designee to be economically feasible according to standard underwriting criteria, consistent with private market requirements, which shall be updated periodically by DHCD, and furnished to applicants.
- 4107.10 Underwriting criteria may include, but are not limited to, the following:
- (a) Loan-to-value ratio;
  - (b) Debt coverage ratio;
  - (c) Allowable vacancy loss calculation;
  - (d) Replacement and operating cost reserves;
  - (e) Criteria for operating cost allowances;
  - (f) Appraisal and market analysis requirements; and
  - (g) Borrower capability and credit requirements.
- 4107.11 Fund assistance for housing shall be limited to amounts needed to support the availability of Reserved Units which are affordable for occupancy by low- and moderate-income households as defined in §4199.

SOURCE: Final Rulemaking published at 36 DCR 8631, 8641 (December 29, 1989).



**4108 APPROVAL AND FUNDING OF APPLICATIONS AND CONTINUING RESPONSIBILITIES OF DEVELOPERS**

- 4108.1 Upon receipt of any application for a Housing Production Loan, DHCD or its designee shall perform an initial review to determine the completeness and its compliance with Property and Borrower eligibility requirements as specified in §§4106 and 4107.
- 4108.2 DHCD or its designee shall reject applications which are initially determined to be incomplete or ineligible and may, in its sole discretion, grant additional time as it deems appropriate to enable applicants to correct deficiencies identified during the initial evaluation of the application.
- 4108.3 Applications determined to be complete and meeting intake requirements shall be reviewed by DHCD, or its designee, in accordance with the criteria established pursuant to this chapter.
- 4109.4 The DHCD or its designee shall approve or reject applications based on written underwriting criteria, evaluation procedures, priorities, and other criteria and procedures, consistent with the Act, this chapter and funding availability.
- 4108.5 All applications rejected by Participating Lenders shall be referred to DHCD for review and further consideration. DHCD reserves the right to evaluate, approve and fund directly the applications independent of the Participating Lender.
- 4108.6 At the sole discretion of DHCD, highly ranked applications for which there is no current funding availability may be held by DHCD for subsequent late approval if additional funds become available or earlier approved projects are not proceeding on a timely basis.
- 4108.7 DHCD or its designee shall notify all applicants, in writing, of its final decision regarding application approval or disapproval.
- 4108.8 The initial approval of applications by DHCD or its designee shall be in the form of a written conditional commitment letter to the applicant which shall establish conditions precedent to receipt of financial assistance through the Fund.

SOURCE: Final Rulemaking published at 36 DCR 8631, 8644 (December 29, 1989).

**4109 THE SPECIAL FINANCIAL PRODUCTS COMPONENT**

- 4109.1 Funds allocated to the Special Financial Products Component may be used to provide Special Financial Products to Eligible Borrowers, described in §4106.1 who may be eligible to make an application for a Housing Production Loan.
- 4109.2 Special Financial Products may be used to provide the following types of assistance:
- (a) Grants for architectural designs for adaptive re-use of previously non-residential structures;

- (b) Bridge loans and gap financing to reduce up-front costs and costs of residential development and to continue the construction or rehabilitation of a property, should circumstances change adversely during development;
- (c) Loans for first-effort model projects;
- (d) Financing for construction loan guarantees or collateral;
- (e) Loans or grants to provide on-site child development facilities for housing or commercial developments financed, assisted or constructed as a result of a linked development program approved by the D.C. Zoning Commission;
- (f) Loans to non-profit housing developers for predevelopment expenses;
- (g) Loans to develop housing and provide services to low- and moderate-income elderly special housing needs individuals and families; and
- (h) Other loans for housing production determined by DHCD to be consistent with these Rules and the purposes of the Act.

SOURCE: Final Rulemaking published at 36 DCR 8631, 8644 (December 29, 1989).

#### **4110 APPLICATIONS: SPECIAL FINANCIAL PRODUCTS**

##### **4110.1 Special Financial Products may be originated as follows:**

- (a) Directly by DHCD; or
- (b) By non-profit organizations pursuant to a written agreement with DHCD specifying the terms and conditions, consistent with the Act and this chapter.

4110.2 All Special Financial Products, whether originated by DHCD or a non-profit organization shall comply with the application procedures for Housing production Loans as set forth in §§4106.5, 4106.6, 4106.7, and 4108.

4110.3 All prospective Borrowers or Grantees for financial assistance through the Special Financial Products Component shall be subject to the Borrower eligibility criteria and priorities as set forth in §§4106.1 through 4106.4.

SOURCE: Final Rulemaking published at 36 DCR 8631, 8645 (December 29, 1989).

#### **4111 ELIGIBILITY AND PRIORITY CRITERIA FOR SPECIAL FINANCIAL PRODUCTS**

4111.1 Eligible Borrowers or Grantees may make application through the Special Financial Products Component for a variety of specialized forms of financial assistance authorized in D.C. Law 7-202 and specified in §4109.2.



- 4111.2 Except for properties for which loans or grants are requested to provide on-site child development facilities described in §4109.2(e) and which shall be subject to the additional eligibility criteria of §4111.6, properties for which an Eligible Borrower or Grantee may receive assistance through the Special Financial Products Component shall be subject to the Property Eligibility Criteria and Priorities for Housing Production Loans as set forth in §4107.
- 4111.3 All other provisions of this chapter notwithstanding, applications for the following Special Financial Products shall be subject to the additional eligibility criteria described in §§4111.4 through 4111.6:
- (a) Grants for architectural design for adaptive reuse of previously non-residential structures, as described in §4109.2(a);
  - (b) Bridge Loans and Gap Financing to reduce up-front costs of residential development and to continue the construction or rehabilitation of a property should circumstances change adversely during development, as described in §4109.2(b); and
  - (c) Loans or grants to finance on-site child development facilities for proposed housing or commercial development projects, as described in §4109.2(e).
- 4111.4 Grants for architectural designs for adaptive reuse of previously non-residential structures described in §4109.2(a) shall only be available to Eligible Borrowers which are able to demonstrate in writing to DHCD or its designee that the property for which special financial product assistance is requested has been reviewed by a licensed architect and has been found to be economically feasible for conversion to housing.
- 4111.5 Bridge loans and gap financing to reduce up-front costs and costs of residential development to keep a housing project in operation, should circumstances change adversely during development as described in §4109.2(b) shall only be available to Eligible Borrowers which are able to demonstrate the following to the satisfaction of DHCD or its designee:
- (a) Construction of the project for which special financial product assistance is requested has commenced;
  - (b) Completion of the project for which special financial product assistance is requested would be severely jeopardized without additional funds;
  - (c) Required additional funds are unavailable to the Borrower from private financial institutions; and
  - (d) Borrower agrees in writing to accept to abide by any DHCD mandated changes to or substitution of the membership or composition of the Development Team of the Project.

4111.6 Loans or grants to finance on-site child development facilities for proposed housing or commercial development projects described in §4109.2(e) shall only be available to eligible borrowers which are able to demonstrate the following to DHCD or its designee:

- (a) The amount of special financial product assistance for the child development facility does not exceed the minimum cost of constructing the facility to meet the minimum requirements of the D.C. Building Code;
- (b) The percentage of spaces reserved for children of low- and moderate-income families in the child development facility shall be no less than the percentage of the facility's total development costs which are assisted by the Fund, as determined by DHCD;
- (c) Any fees assessed to the low- and moderate-income families described in this section for child care services shall be affordable to such low- and moderate-income families as determined by DHCD or its designee;
- (d) When accepting children for the reserved spaces, the following children shall be accepted in descending order of priority:
  - (1) Dependent children of low to moderate income residents of the residential building containing an assisted child development facility; or
  - (2) Dependent children of low to moderate income employees of businesses located in the commercial building containing the assisted child development facility;
- (e) Other children of low to moderate income households whose residences or places of employment provide reasonable access to the assisted child development facility; and
- (f) Children of other low to moderate income District of Columbia residents.

SOURCE: Final Rulemaking published at 36 DCR 8631, 8646 (December 29, 1989).

## 4112 CONDITIONS FOR PROJECT CLOSINGS

4112.1 Prior to closing on any financial assistance under the Fund, the applicant shall meet all conditions of the conditional commitment of DHCD or its designee and other requirements of this chapter to the satisfaction of DHCD or its designee.

4112.2 Each applicant shall agree in writing to permit all inspections of the property and property records as DHCD, its designee, and other District agencies deem necessary to ensure the quality of rehabilitation or development work and compliance with District of Columbia laws and regulations during the construction period and after occupancy.



- 4112.3 Each applicant shall demonstrate to the satisfaction of DHCD or its designee that the property meets the requirements of the zoning regulations of the District of Columbia for the use, location, and occupancy level intended.
- 4112.4 With respect to rental or cooperative properties, each applicant shall agree in writing to submit to DHCD or its designee annual audited property or project income and expense statements, as well as annual corporate or business financial statements.
- 4112.5 Each applicant shall execute and agree to be bound by a Rent Regulatory Agreement or a Price and Carrying Charge Regulatory Agreement, as appropriate, which shall set forth the terms and conditions covering all Reserved Units, and may be recorded as a lien or covenant on the property.
- 4112.6 The Agreement shall include, but not be limited to, the requirements set forth in §§4112.7 through 4112.13.
- 4112.7 Each applicant shall warrant that the tenant income and eligibility requirements or the initial purchase prices of the reserved units are consistent with the provisions of §4107.
- 4112.8 With respect to rental properties each applicant shall do the following:
- (a) Establish the basis for the approval or disapproval of rent increases in the Reserved Units for a period of forty (40) years or the term of Fund assistance whichever is greater; and
  - (b) Warrant that the rents of Reserved Units shall be continually affordable to low- and moderate-income households for a period of forty (40) years or the term of the Fund assistance, whichever is greater.
- 4112.8 With respect to Reserved Units, if any, which may be sold to low- and moderate-income households each applicant shall provide a written strategy subject to the express, prior written approval of DHCD to ensure that the initial sale prices and all subsequent resale prices shall be continuously affordable to low- and moderate-income households for a minimum period of forty (40) years or longer from the date of initial occupancy.
- 4112.10 Each applicant shall warrant that priority in renting or selling the Reserved Units shall be provided to low- and moderate-income families and individuals referred by DHCD or the D.C. Department of Public and Assisted Housing.
- 4112.11 Each applicant shall provide that DHCD may establish any means of enforcement of the provisions of this section as it determines to be necessary and consistent with this chapter and other provisions of District of Columbia law.
- 4112.12 Each applicant shall provide that DHCD shall notify the D.C. Department of Consumer and Regulatory Affairs and other appropriate District and federal authorities, upon the expiration, termination or material breach by Borrower of the Rent Regulatory Agreement.

- 4112.13 An applicant may petition DHCD to terminate the Rent Regulatory Agreement prior to its expiration. The Director may approve the petition following an appropriate review assessment and analysis of the housing requirements of the tenants of the property, the demand for affordable housing of the District, the impact of termination of the Agreement upon neighborhood stabilization activities, and other factors and consideration which the Director may deem to be necessary and appropriate.

SOURCE: Final Rulemaking published at 36 DCR 8631, 8648 (December 29, 1989).

## 4199 DEFINITIONS

- 4199.1 When used in this chapter, the following words and phrases shall have the meanings ascribed:

**Applicant** - a corporation, partnership, joint venture, individual or other eligible entity which submits an application for assistance from the Housing Trust Fund.

**Child development facility** - facility where a child development program is provided for infants and children, away from home, for less than twenty-four (24) hours a day for each infant or child, and which is to be located on a development agreement or commercial project under a linked proposed housing. The term child development facility shall include a child development center, child development home, or infant care center, but does not include a public or private elementary school engaged in legally rehired education and related functions.

**Code violations** - violations of any applicable District of Columbia Municipal Regulation governing the condition or serviceability of a dwelling or its component systems, or its appropriateness for the use or occupancy intended, or its conformance with existing zoning.

**Construction** - the erection or substantial rehabilitation of structures for housing and related facilities.

**Council** - Council of the District of Columbia.

**DHCD** - the Department of Housing and Community Development.

**Dwelling unit** - any part of a multi-family, single room occupancy or congregate housing facility which is rented for residential occupancy and includes any apartment, efficiency apartment, single room, suite of rooms, or duplex. In a congregate housing facility, a bed in a shared sleeping room may be considered as a dwelling unit. If the dwelling unit is a congregate housing or single room occupancy facility, it may or may not contain a kitchen or bath.

**Elderly special housing needs individuals and families** - an individual or family whose head of household, or spouse of the head of household, is at least sixty (60) years of age and households who belongs to at least one of the following categories:

- (a) Disabled - an individual meeting the definition of disability in §223 of the Social Security Act (42 U.S.C. 423) or §102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970 (42 U.S.C. 2691 (1));



## (b) Handicapped:

- (1) An Individual who has a medically determinable physical impairment, including blindness, which prohibits and incapacitates seventy-five percent (75%) of that person's ability to move about, to assist himself or herself, or to engage in an occupation;
- (2) An individual who has a physical or mental impairment which is expected to be of long continued and indefinite duration, substantially impedes his or her ability to live independently, and is of a nature that the ability could be improved by more suitable housing conditions; or
- (3) An individual who has developmental disability which is a severe, chronic disability of a person which is attributable to a mental or physical impairment or combination of mental and physical impairments; is manifested before the person attains age twenty-two (22); is likely to continue indefinitely; results in substantial functional limitations in three (3) or more of the following areas of major life activity of self-care, receptive and expressive language, learning, mobility, self-directions, capacity for independence living and economic sufficiency; and reflects the person's need for a combination and sequence of special care, treatment or other services which are of a lifelong or extended duration and are individually planned and coordinated;

(c) An individual who is homeless; or

(d) An individual who is medically determined chronically mentally ill or retarded.

**Eligible borrower** - a borrower who may be eligible in accordance with §4106 to make application for financial assistance through the Housing Trust Fund.

**Fund** - the Housing Production Trust Fund established pursuant to Housing Production Trust Fund Act of 1988, D.C. Law 7-202.

**Grantee** - an "Eligible Borrower" which receives a Grant through the Special Financial Products Components of the Housing Production Trust Fund.

**Housing production** - the construction, rehabilitation, or preservation of decent, safe, and affordable housing.

**Low-income** - a household or family whose annual income is less than fifty percent (50%) of the median family income for the Washington Metropolitan Area, as adjusted for family size determined by DHCD periodically based on available data.

**Mayor** - the Mayor of the District of Columbia.

**Minority housing developer** - a housing developer controlled by minority persons who possess at least fifty-one (51%) of the ownership and controls its daily management and operations.

operations.

**Moderate-income** - a household or family whose annual income is at least fifty percent (50%) and no more than eighty percent (80%) of the median family income for the Washington Metropolitan Area, adjusted for family size, as determined by DHCD periodically based on available data.

**Non-profit housing developer** - a housing developer who qualifies as an non-profit organization under §501(c)(3) of the Internal Revenue Code of 1986, approved October 22, 1986 (68 *Stat.* 3; 26 U.S.C. §501(c)(3)).

**Predevelopment expenses** - expenses associated with the project which accrue prior to the selection or approval of an applicant. These costs may include, but are not limited to, reasonable professional fees for architects, engineers, development consultants and attorneys.

**Property** - the land and improvements receiving fund assistance.

**Reserved units** - dwelling units which rents or sales prices are affordable to lower or moderate income households for a period of forty (40) years or longer.

**Total development cost** - the cost of preservation, construction, or substantial rehabilitation of Housing and Related Facilities, and of the land on which they are located, including necessary site improvements and other expenses attributable to the capital cost of the preservation, construction, or substantial rehabilitation or development of the Housing and Related Facilities.

**SOURCE:** Final Rulemaking published at 36 DCR 8631, 8649 (December 29, 1989).